

R317-102. Utah Wastewater State Revolving Fund (SRF) Program.

R317-102-1. Policies and Guidelines.

The [~~Policies and Guidelines~~] administrative rules described in R317-101, Utah Wastewater Project [~~Loan, Credit Enhancement and Interest Buy-Down~~] Assistance Program apply as a part of this Rule.

R317-102-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Utah Water Quality Board to issue loans ~~to political subdivisions~~ to finance all or part of wastewater project costs from [~~a federal capitalization grant~~] the SRF is provided in Title VI of the Federal Clean Water Act and Sections 73-10b-1, and 73-10c-1 of the Utah Code Annotated.

R317-102-3. Definitions and Eligibility.

A. Eligible Activities of the SRF. All funds within the SRF must be used solely to provide loans and other authorized forms of financial assistance, but not grants:

1. for the construction of publicly owned wastewater treatment works as defined in Section 212 of the CWA that appear on the Utah State Project Priority List as described in R317-1001;
2. for implementation of a nonpoint source pollution control management program under Section 319 of the CWA.

B. First Use Requirement. The categories of funds described below must first be used for any major and minor publicly owned treatment works (POTW) that EPA Region VIII and Utah has previously identified as part of the National Municipal Policy universe:

1. the Federal capitalization grant award under section 205(m) and Title VI of the CWA;
2. repayments of initial loans awarded from the grant; and
3. the State match.

In order for Utah to use these funds for other kinds of treatment works, without unmet enforceable requirements under 212 or programs for nonpoint pollution sources, the Utah Division of Water Quality must certify that the POTW[~~s~~] described above are:

- a. in compliance, or
- b. on an enforceable schedule, or
- c. have an enforcement action filed, or
- d. have a funding commitment during or prior to the first year covered by the Intended Use Plan.

C. Types of Financial Assistance

1. Loans

a. Interest Rate. Loans may be made at or below market interest rates.

b. Repayment. Annual repayments of principal and interest will be made to begin not later than one year after project completion. Project Completion shall be defined as the date operations of the treatment works are capable of being initiated. Where a treatment works has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments. At the discretion of the Water Quality Board, principal and interest payments may begin earlier than one year after operations are initiated.

~~[The loan must be fully amortized not later than twenty years~~

~~after project completion.]~~The yearly amount of the principal repayment and the interest payment is set at the discretion of the Water Quality Board.

c. Dedicated Repayment Source. Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan.

2. Refinancing Existing Debt Obligations. The Water Quality Board may use funds from the SRF ~~[may]~~ to buy or refinance local debt obligations at or below market interest rate, where such debt was incurred after March 7, 1985. Refinanced projects must comply with the requirements imposed by the CWA as though they were projects receiving initial financing from the SRF. Further, where the original debt was in the form of a multi-purpose bond incurred for purposes in addition to wastewater treatment facility construction, refinancing from the SRF may be provided only for eligible purposes, and not for the entire debt.

3. Guarantee or Purchase Insurance for Local Debt Obligations.

4. Guarantee SRF Debt Obligations. Resources in the SRF may be used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State and deposited in the SRF.

5. Loan Guarantees for sub-State Revolving Funds.

6. Earn Interest on Fund Accounts.

7. SRF Administrative Expenses.

~~[R317-102-4. Compliance with Requirements of Title II of the Clean Water Act of 1987.~~

~~Sixteen specific requirements must be met by recipients of assistance from funds made directly available by Federal capitalization grant funds before 1995. These sixteen requirements, cited from the July 1, 1988 edition of the Code of Federal Regulations, are as follows:-~~

~~1. Projects are required to apply best practicable waste treatment technology (see 40 CFR 35.2005(b)(7): Definition of BPWTT); and 40 CFR 35.2030(b)(2): Facilities Planning);-~~

~~2. Assistance is limited to projects for secondary treatment, advanced treatment, or any cost-effective alternative, new interceptors and appurtenances, and infiltration-inflow correction. However, the discretionary set-aside can use up to 20 percent of its capitalization grant for other projects within the definition of treatment works in Section 212 (2), and for certain nonpoint source control and groundwater protection purposes, as defined in Section 319 of the CWA and subsequent EPA regulations (40 CFR 35.2015(b)(2)(ii-iv): State Priority System and Project Priority List);-~~

~~3. Alternative technologies must be considered in project design (40 CFR 35.2030: Facilities Planning);-~~

~~4. Applicants are required to show that the related sewer collection system is not subject to excessive infiltration (40 CFR 35.2030(b)(4): Facilities Planning, and 40 CFR 35.2120: Infiltration/Inflow);-~~

~~5. Applicants are required to study innovative and alternative treatment technologies and take into account opportunities to construct revenue producing facilities and to make more efficient uses of energy and resources (40 CFR, 35.2030: Facility Planning);-~~

~~6. Applicants are required to analyze the potential recreation~~

~~and open space opportunities in the planning of the proposed facility (40 CFR 35.2030(b)(5): Facilities Planning);~~

~~7. Funds under Section 205 may be used for water quality problems due to discharges of combined sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a State (40 CFR 35.2015(b)(2)(iv): State Priority Systems categories of need and 35.2024(a): Combined Sewer Overflows);~~

~~8. Applicants must develop a capital financing plan acceptable to the Water Quality Board;~~

~~9. Treatment works projects must be included in plans developed under Sections 208 (40 CFR 35.2102: Water Quality Management Plans);~~

~~10. Treatment works projects must be included in plans developed under Sections 303(e) (40 CFR 35.2102: Water Quality Management Plans);~~

~~11. Applicants are required to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate, and maintain the treatment works (40 CFR 35.2208: Adoption of Sewer Use Ordinance and User Charge System; 35.2130: Sewer Use Ordinance; 35.2140: User Charge System; 35.2214: Grantee Responsibilities; 35.2122: Approval of User Charge System and proposed Sewer Use Ordinance; 35.2110: Access to Individual Systems; and 35.2206(a): Operation and Maintenance);~~

~~12. The owner/operator of the treatment works must certify that the facility meets design specifications and effluent limitations included in its permit one year after the date of construction (40 CFR 35.2218(c), (d) and (e)(2): Project Performance);~~

~~13. Major rehabilitation or replacement of collectors are not eligible, under the 20 percent discretionary authority of 201(g)(1), unless the collector is needed to assure the total integrity of the treatment works or that for a new collector, adequate capacity exists at the facility (40 CFR 35.2116: Collection System); Funding for separate storm sewers is prohibited through fiscal year 1990;~~

~~14. The applicant must assure that treatment systems are cost-effective and projects of over \$10 million must include a value engineering review (40 CFR 35.2030(b)(3): Cost Effectiveness, Facilities Planning, and 35.2114: Value Engineering);~~

~~15. The requirements of the National Environmental Policy Act must be met (CFR 35.2113: Environmental Review);~~

~~16. The applicant must apply Davis-Bacon labor wage provisions to treatment works construction (29 CFR Part 5). Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (Section 513, applies 40 U.S.C. 276 et seq.);]~~

R317-102-[5]4. Compliance with Other Requirements.

~~[In addition to the requirements of R317-102-4, applicants for Recipients of SRF funds may, if determined by the Water Quality Board, as provided by federal law, be required to meet the following other requirements, cited from the July 1, 1988 edition of the Code of Federal Regulations:~~

~~[1]A. Title VI of the Civil Rights Act of 1964, whereby applicants must certify compliance with this act [Title VI of the Civil Rights Act of 1964] (40 CFR Parts 7[+]; Nondiscrimination in Programs Receiving Federal Assistance From EPA; and 40 CFR Part 12: Non-discrimination on the Basis of Handicap in Programs or Activities Conducted by the Environmental Protection Agency);~~

[2]B. Minority and Women Owned Business Enterprise Procurement, whereby applicants agree to assist the state in meeting objectives established under 40 CFR 33.240, prior to authorization of the assistance agreement;

~~[3. Procurement Requirements, whereby applicants agree to comply with federal procurement requirements (40 CFR Part 33);]~~

[4]C. Accounting Procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements;

[5]D. Construction Payment Schedule, whereby applicants agree to supply the Division of Water Quality with a construction draw-down schedule before the ~~bond~~ loan closing.

E. Davis-Bacon Labor Wage Provisions. The applicant must apply Davis-Bacon labor wage provisions to treatment works construction (29 CFR Part 5). Wages paid for the construction of treatment works must conform to the prevailing wage rates established for the locality by the U.S. Department of Labor under the Davis-Bacon Act (Section 513, applies 40 U.S.C. 276 et seq.).

R317-102-5. Loans For Underground Wastewater Disposal Systems.

Replacement or repair of underground wastewater disposal systems (UWDS), as defined in R317-501-1.1, are eligible for funding through the SRF if they have malfunctioned or are in non-compliance with state administrative rules or local regulations governing the same. The following procedures apply to UWDS loans:

A. Loans will only be made for the repair or replacement of existing malfunctioning UWDS, as determined by the local health department and as defined in R317-501-1.34, when the malfunction is not attributable to inadequate system operation and maintenance.

B. Projects will be prioritized according to criteria established in R317-100-4, Utah State Project Priority System for the Utah Wastewater Project Assistance Program.

C. UWDS loan applications will be received by the local health department which will evaluate the need, priority, eligibility and technical feasibility of each project. The local health department will issue a certificate of qualification (COQ) for projects which qualify for a UWDS loan. The COQ and completed loan application will be forwarded to the Division of Water Quality for its review.

D. The maximum term of the UWDS loan will be 10 years.

E. The maximum loan amount for a system serving an individual residence will be \$15,000. A larger loan may be considered for a system serving multiple residences.

F. The interest rate on UWDS loans will be equal to 60% of the interest rate on a 30-year U.S. Treasury bill.

G. UWDS loan recipients must have a total household income no greater than 150% of the state median adjusted household income, as determined from the Utah Tax Commission's most recently published data.

H. UWDS loan projects are exempt from environmental reviews under the National Environmental Policy Act (NEPA) as long as the funding of these projects is identified in Utah's Non-point Source Pollution Management Plan.

I. Security for UWDS Loans

a. The borrower must adequately secure the loan with real property or chattel.

b. The ratio of the loan amount to the value of the pledged

security must not be greater than 70%.

J. Eligible activities under the UWDS loan program include:

1. Septic tank

2. Absorption system

3. Building sewer

4. Appurtenant facilities

5. Conventional or alternate UWDS

6. Connection of the residence to an existing centralized sewer system, including connection or hook-up fees, if this is determined to be the best means of resolving the failure of an UWDS.

7. Costs for construction, permits, legal work, engineering, and administration.

K. Ineligible project components include:

1. UWDS systems serving commercial establishments;

2. land;

3. interior plumbing fixtures;

4. impact fees, if connecting to a centralized sewer system is determined to be the best means of resolving the failure of an UWDS;

5. UWDS for new homes or developments;

6. UWDS operation and maintenance.

L. The local health department will certify the completion of the project to the Division of Water Quality.

M. To be reimbursed for project expenditures the borrower must maintain and submit invoices, financial records, or receipts which document the expenditures or costs.

N. UWDS loan recipients will be billed for monthly payments of principal and interest beginning 60 days after execution of the loan agreement.

O. The UWDS loan must be paid in full if the property served by the project is sold or transferred.

P. UWDS loan applications may be prioritized in accordance with R317-100-4 so that the limited funds which are available are allocated first to the highest priority projects.

Q. The Utah Division of Water Quality, or its designee, will evaluate the financial aspects of the project and the credit worthiness of the applicant.

R. The Executive Secretary to the Water Quality Board, and/or another whom the Water Quality Board may designate, will execute UWDS loan agreements with the borrower.

S. UWDS loans in amounts in excess of \$150,000 will be presented to and authorized funding by the Water Quality Board. Loans of less than \$150,000 will be considered and authorized funding by the Executive Secretary to the Water Quality Board.

R317-102-6. Loans For Non-point Source Pollution Projects

Non-point Source Pollution (NPS) Projects, as defined in UAC 73-10c-2(9), are eligible for funding through the SRF. The following procedures apply to NPS project loans:

A. Loans to individuals in amounts in excess of \$150,000 will be presented to and authorized funding by the Water Quality Board. Loans of less than \$150,000 will be considered and authorized funding by the Executive Secretary to the Water Quality Board.

B. The Executive Secretary to the Water Quality Board, and/or another whom the Water Quality Board may designate, will execute NPS project loan agreements with the borrower.

C. Projects will be prioritized according to criteria established in R317-100-4, Utah State Project Priority System for the

Utah Wastewater Project Assistance Program.

D. Following authorization of funds by the Water Quality Board or Executive Secretary, as appropriate, the applicant has a period of six months to meet the conditions of the loan authorization and complete a loan closing. If a loan closing for the project has not occurred within six months of the loan authorization, the funding may be rescinded.

E. The maximum term of NPS project loans will be twenty years but not beyond the depreciable life of the project.

F. The interest rate on NPS project loans will be zero percent.

G. NPS project loans are exempt from environmental reviews under the National Environmental Policy Act (NEPA) as long as the funding of these projects is identified in Utah's Non-point Source Pollution Management Plan.

H. Security for NPS project loans

1. NPS project loans to individuals in amounts greater than \$15,000 will be secured by the borrower with water stock or real estate. Such loans less than \$15,000 may be secured with other assets.

2. For NPS project loans to individuals the ratio of the loan amount to the value of the pledged security must not be greater than 70%.

3. NPS loans to political subdivisions of the state will be secured by a revenue bond, general obligation bond or some other acceptable instrument of debt.

I. Eligible projects under the NPS project loan program include projects which:

1. abate or reduce untreated or uncontrolled runoff;

2. improve critical aquatic habitat;

3. conserve soil, water, or other natural resources;

4. protect and improve ground water quality;

5. preserve and protect the beneficial uses of water of the state;

6. reduce the number of water bodies not achieving water quality standards;

7. improve watershed management;

8. prepare and implement total maximum daily load (TMDL) assessments.

J. NPS projects which will serve concentrated animal feeding operations (CAFOs), as defined by EPA, are ineligible for NPS project loans.

K. The Division of Water Quality will determine project eligibility and priority. Periodic payments will be made to the borrower, contractors or consultants for work relating to the planning, design and construction of the project. The borrower must maintain and submit the financial records which document expenditures or costs.

L. The Division of Water Quality, or its designee, will perform periodic project inspections. Final payment on the NPS loan project will not occur until a final inspection has occurred and an acceptance letter issued for the completed project.

M. NPS project loan recipients will be billed periodically for payments of principal and interest as agreed to in the executed loan agreements or bond documents.

N. NPS project loan applications may be prioritized so that the limited funds which are available are allocated first to the highest priority projects.

O. The Utah Division of Water Quality, or its designee, will evaluate the financial aspects of the NPS project and the credit worthiness of the applicant.

P. The Executive Secretary, or other individuals the Water Quality Board may designate, will execute NPS project loan agreements with the borrower.

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